IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.4330 OF 2006
IN
NOTICE OF MOTION NO.3046 OF 2006
IN
APPEAL (lodg) NO.734 OF 2006
(APPEAL NO.895 OF 2006)
IN
NOTICE OF MOTION NO.190 OF 2003
IN
insolvency notice no.N/287 OF 2003

Rammohan Sitaram Bidwatka. ...Appellant.

vs.

1.Indian Overseas Bank & others. ...Respondents.

Mr.S.K.Chaurasia i/b. A.M.Saraogi,for Appellant in support of Notice of motion.

Ms.Sonali Shinde i/b. M/s.Consulta Juris, for Respondent 1 to show cause.

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATED: 29th October,2007.

P.C.:-

1. This notice of motion has been taken out by

the appellant for restoration of notice of motion no.3046 of 2006. Notice of motion no.3046 of 2006 was dismissed for default because the appellant was not present when that notice of motion was called for hearing. Notice of motion no.3046 of 2006 was for condonation of delay of 131 days in filing the appeal. Therefore, we heard the learned Counsel appearing for appellant on the merits of the appeal to find out whether there is any substance in the appeal.

2. The appeal is preferred against the order dated 23.3.2006 passed by the learned Single Judge of this Court in notice of motion no.190 of 2003. That notice of motion was taken out by the appellant for setting aside the insolvency notice no.287 of 2003. that notice was taken out by the Indian Overseas Bank. That insolvency notice was challenged by the appellant on the ground that his assets exceeds the debt due and payable to the creditors. The learned Single Judge observed in the order that as per the bank the claim of the bank itself is in excess of Rs.3 crores, whereas the assets of the judgment

debtor are around Rs.1,12,00,000/-. We find that these observations of the learned Single Judge is based on the statements made in the affidavit dated 23.3.2006 filed on behalf of the Bank before the learned Single Judge. In that affidavit, it is clearly stated that the claim of the Bank against the judgment debtor and his concerns is in excess of Rs.3 crores 68 lakhs. This statement found in that notice is neither disputed before the learned Single Judge nor it is disputed in the appeal. Thus, as far as the record goes, there is nothing on record to show that the observation made in the order dated 23.3.2006 by the learned Single Judge, that the case of the appellant that his assets exceeds his liability to the creditors cannot be accepted, and therefore, insolvency notice taken up by the bank can not be set aside, is in any way wrong. As we find that there is no substance in the appeal, in our opinion, it will be futile to restore the notice of motion seeking condonation of delay in filing the appeal. The notice of motion is therefore, disposed of.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)